IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 1464 of 2018
&
C.M.P. No. 11673 of 2018

M/s. Reliance General Insurance Company Limited,
rep. by its Branch Manager,
Having office at Sri Lakshmi Complex,
First Floor, Bharathi Street,
Swarnapuri, Salem – 4. ..Appellant/2nd Respondent

Vs.

1. M. Dhanam
2. B. Jagadeeswari
3. B. Thithisha (Minor)
4. B. Arulmurugan (Minor)

(Respondents 3 & 4 minors rep. by mother and NF 1st respondent)
..Respondents 1 to 4/Petitioners

5. C. Thangaraju
6. D. Sharon Vineeth
7. M/s. Bajaj Allianz General Insurance Company Limited,
rep. by its Branch Manager,
Having Office at Door No.11,
People's Park, 3rd Floor,
Government Arts College Road,
Coimbatore – 641 018.
..Respondents 5 to 6/Respondents 1,3 & 4

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 31.08.2017 passed in M.C.O.P. No. 1498 of 2013 by the Motor Accidents Claims Tribunal (Special District Court), Salem.

For Appellant :: Mr.R. Mohan Babu for
M/s. M.B. Raghavan

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 14,27,000/- granted as compensation for the death of one M. Balakrishnan, aged about 32 years, in the accident, which occurred on 23.03.2018 when the deceased was driving his Tata Ace vehicle, which was hit by a lorry belonging to the 6th respondent insured with the appellant Insurance Company and also the fixing of entire liability on the driver of the lorry.

2. Heard Mr.R. Mohan Babu, learned counsel for the appellant. He would submit that Ex-P1 FIR had been registered against the deceased, namely, the driver of Tata Ace Vehicle and R.W.2, the driver of the lorry deposed that Tata Ace vehicle came in the wrong lane and hit againt the lorry. Therefore, there cannot be any negligence on the part of the driver of the lorry, the insured vehicle and it was only the deceased, who was the tort-feasor. According to him, the award of the Tribunal is also excessive.

3. A perusal of the records would show that the Tribunal took note of the fact that only in the event of the lorry hitting the Tata Ace vehicle with such force, there is possibility of Tata Ace vehicle going reverse and hitting the two-wheeler, which was coming behind it. Though R.W.2, the driver of the lorry deposed that the deceased, who drove the Tata Ace Vehicle was responsible for the accident, the finding given by the Tribunal is based on facts and the possibility of such an event could not be ruled out. When the lorry, a bigger vehicle dashes against a smaller vehicle like Tata Ace, with great momentum, definitely, the smaller vehicle would be pushed backwards with such speed and any vehicle, coming behind it, would be hit and that is what has happened in this case. Thus, the driver of the lorry was responsible for the accident and the finding reached by the Tribunal cannot be set aside so far as negligence aspect is concerned and the same is confirmed.

4. As far as quantum is concerned, a close scrutiny of the award would show that the Tribunal only took Rs.8000/- as the monthly income of the deceased. The Honourable Apex Court, in Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627 for the injuries sustained by a vegetable vendor, in the accident, which occurred in 2008, fixed the monthly income at Rs.6500/- whereas in this

case, the accident had occurred in 2013 and the deceased was a driver. Therefore, fixing Rs.12,000/- as the monthly income would be reasonable. No amount was awarded by the Tribunal towards “Future Prospects”. Since the deceased was aged about 32 years, 40% has to be added towards “Future Prospects” in the light of the judgment of the Honourable Apex Court in National Insurance Company V. Pranay Sethi and others reported in 2017 ACJ 2700. Accordingly, adding 40%, “the total monthly income” comes to,

Total Monthly Income :: Rs.12,000/- + 40%(Rs.12,000/-)

:: Rs.12,000/- + Rs.4,800/-

:: Rs.16,800/-

The size of the family of the deceased is five and therefore, one-fourth deduction has to be made towards " Personal Expenses" of the deceased, which was rightly done by the Tribunal. Accordingly, deducting one-fourth towards " Personal Expenses", the "Monthly Contribution of the deceased to his family" comes to,

Total Monthly Income	::	Rs.16,800/-
Less:1/4th towards "Personal Expenses"	::	Rs.16,800/-(-) ¼ (Rs.16,800/-)
Monthly Contribution	::	Rs.12,600/-
Annual Contribution	::	Rs.12,600 x 12

The age of the deceased is 32 years, as per Ex-P2, postmortem certificate and the appropriate multiplier to be adopted is 16, as rightly done by the Tribunal. Applying the same, " Loss of Income", comes to

Loss of Income :: Rs.12,600 x 12 x 16

:: Rs.24,19,200/-

The Tribunal has awarded a sum of Rs.25,000/- towards "Funeral Expenses" and the same is reduced to Rs.15,000/- following the judgment of the Constitution Bench of the Honourable Apex Court in Pranay Sethi's case. The sum of Rs.75,000/- awarded towards " Loss of Consortium" to the 2nd respondent wife is reduced to Rs.40,000/-. The amount awarded towards "Loss of Love and Affection", namely, Rs.1,50,000/- to respondents 3 & 4/ minors is confirmed and so also the amount of Rs.25,000/- to the 1st respondent/mother of the deceased, since the amount awarded towards " Loss of Love and Affection" is akin to the amount awarded towards " Loss of

Consortium" to the spouse. No amount was awarded towards " Loss of Estate". Hence, a sum of Rs.15,000/- is awarded under the said head. The total compensation payable to the claimants, comes to,

Loss of Income	::	Rs.24,19,200/-
Loss of Consortium	::	Rs. 40,000/-
Loss of Love and Affection	::	Rs. 1,75,000/-
Funeral Expenses	::	Rs. 15,000/-
Loss of Estate	::	Rs. 15,000/-
Total	::	Rs.26,64,200/-

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered.

5. Though the appeal has been preferred by the Insurance Company, the facts and circumstances of the case, enables this Court to enhance the compensation awarded by the Tribunal from Rs. 14,27,000/- to Rs. 26,64,200/- by re-appreciating the evidence on record and applying the correct position of law, as on date and invoking Order XLI Rule 33 CPC and Section 151 CPC as well as Article 227 of the Constitution of India. Moreover, the provisions of Motor Vehicles Act are benevolent in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

6. Since no notice has been ordered to the claimants, they may not be in a position to know about the enhancement of compensation. Therefore, Registry is directed to mark a copy of this order directly to the claimants, free of cost.

7. Out of the total compensation arrived at, namely, Rs.26,64,200/-, the 2nd respondent/wife would be entitled to Rs.12 lakhs and respondents 3 & 4/would be entitled to Rs.6.5 lakhs each and the 1st respondent/mother would be entitled to the balance amount of Rs.1,64,200/-.

8. The claimants shall pay additional court-fee for the enhanced amount, within a period of two weeks from the date of receipt of a copy of this order failing which the same shall be deducted by the Tribunal from the compensation amount payable to the respective claimants, as per the ratio fixed by this Court,

before transfer.

9. The Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of major claimants, as per the apportionment made by this Court, to their respective Bank accounts, through RTGS, within a period of one week thereon. The share of the minor respondents shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks till they attain majority. The 2^{nd} respondent/mother of the minors is entitled to withdraw interest accruing on such deposit once in three months.

10. In the result, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal to the tune of Rs.14,27,000/- is enhanced to Rs.26,64,200/- with interest @ 7.5% per annum. No costs. Connected C.M.P. is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nv
To
1.The MACT (Special District Court), Salem.

2. M. Dhanam
W/o. Magalingam
Door. No.5, Adi Dravidar Colony
Kandampatti
Salem 5.

3. B. Jagadeeswari
W/o. Balakrishnan
Door. No.5, Adi Dravidar Colony
Kandampatti
Salem 5.

+1 CC to Mr.M.B. Gopalan Associates sr 46673.

C.M.A.No.1464 of 2018

GMR(CO)
SP(04/02/2019)